

### **C. REMARKS**

Applicants respectfully request reconsideration of the outstanding rejections and reexamination of the present application in light of the following amendments and remarks.

#### ***Status of the Claims***

Claims 1, 2, 4-11 and 37 are pending in the application.

#### ***Terminal Disclaimer filed to overcome Provisional Double Patenting Rejection***

The Office Action provisionally rejects the application based on the nonstatutory double patenting rejection based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. [Office Action, p. 2] The Office Action indicates that a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provision rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. [Office Action, p. 3]

In particular, the Office Action provisionally rejects claims 1, 2, 4-11, and 37 on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1 and 4-8 of copending Applicant No. 10/728,164. Without conceding the rejection of the claims, Applicant files a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome the provisional nonstatutory double patenting rejection. Applicants note that with the terminal disclaimer and this response, Applicants submit a receipt showing the power of attorney assigned to the practitioners associated with customer number 43307. In view of the timely filed terminal disclaimer,

Applicant respectfully requests withdrawal of the provisional nonstatutory double patenting rejection and issuance of a timely notice of allowance.

***Conclusion***

Applicants note the citation of pertinent prior art cited by the Examiner.

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims is respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

No extension of time is believed to be necessary. If, however, an extension of time is required, the undersigned hereby authorizes the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

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